

THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF PUERTO RICO

CHRISTOPHER L. RAMOS-TORRES,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

Civil No. 19-1866 (ADC)  
(Related to Crim. No. 15-00109-01 (ADC))

OPINION AND ORDER

Before the Court is Christopher L. Ramos-Torres's ("petitioner") petition to vacate, set aside, or correct sentence under 28 U.S.C. § 2255. **ECF No. 1.** The government opposed. **ECF No. 11.** For the following reasons, petitioner's motion is **DENIED**.

**I. Background**

On May 2, 2015, a Grand Jury returned a two-count indictment against petitioner. **Crim. No. 15-109 ECF No. 1.** Count One charged petitioner with aiding and abetting a carjacking, in violation of 18 U.S.C. §§ 2119(1) and 2. *Id.* at 1. The second count charged petitioner with possessing a firearm during and in relation to a crime of violence in contravention of 18 U.S.C. § 924(c). ("Count Two") *Id.* at 2. On May 11, 2017, petitioner plead guilty to both counts. **Crim. No. 15-109 ECF No. 68.** On November 11, 2017, the Court sentenced petitioner to 70 months of imprisonment as to Count One and 84 months as to Count Two, to be served consecutively to each other. **Crim No. 15-109 ECF No. 88.** Petitioner did not file an appeal.

## II. Arguments

Petitioner moves the Court to vacate his sentence and conviction as to Count Two. **ECF No. 1.**

He claims that 18 U.S.C. § 924(c)(3)(B) is unconstitutionally vague, and thus his conviction under that statute should be vacated. *Id* at 1.

In its response, the government argues that no relief is available to petitioner because carjacking is a crime of violence under § 924(c)(3)(A), rather than § 924(c)(3)(B). **ECF No. 11.**

## III. Legal Standard

Title 18 U.S.C. § 924(c) requires the imposition of a higher mandatory minimum term of imprisonment for possessing a firearm in the commission of a federal crime of violence or a federal drug trafficking offense. *Santos-Cortijo v. United States*, 453 F. Supp. 3d 495, 496 (1<sup>st</sup> Cir. 2020). Two clauses within § 924(c) define a crime of violence: 18 U.S.C. § 924(c)(3)(A), known as the elements clause, and 18 U.S.C. § 924(c)(3)(B), known as the residual clause. *Rojas-Tapia v. United States*, 458 F. Supp. 3d 111, 113 (1<sup>st</sup> Cir. 2020). The elements clause establishes that a crime of violence means an offense that is a felony and includes “as an element the use, attempted use, or threatened use of physical force against the person or property of another.” 18 U.S.C. § 924(c)(3)(A). In turn, the residual clause defines a crime of violence as a felony “that by its nature, involves a substantial risk that physical force against the person or property of another may be used in the course of committing the offense.” 18 U.S.C. § 924(c)(3)(B).

The Supreme Court held in 2019 that § 924(c)'s residual clause is unconstitutionally vague, because it "provides no reliable way to determine which offenses qualify as crimes of violence ..." *United States v. Davis*, 139 S.Ct. 2319, 2324 (2019). The elements clause remains in force.

The federal carjacking statute punishes:

Whoever, *with the intent to cause death or serious bodily harm* takes a motor vehicle that has been transported, shipped, or received in interstate or foreign commerce from the person or presence of another *by force and violence or by intimidation*, or attempts to do so...

18 U.S.C. § 2119(3) (emphasis added). Carjacking is a crime of violence under § 924(c)'s elements clause because it involves the use, attempted use, or threatened use of physical force. *United States v. Cruz-Rivera*, 904 F. Supp. 3d 63, 66 (1<sup>st</sup> Cir. 2018).

#### IV. Discussion

Petitioner claims that because of the Supreme Court's decision in *Davis*, finding § 924 (c)'s residual clause unconstitutional, there is no statutory basis for his conviction and sentence under § 924 (c).

Petitioner was convicted of carjacking.<sup>1</sup> **Crim No. 15-109 ECF No. 88.** The First Circuit determined carjacking is a crime of violence under § 924(c)'s element clause since "it has as an element the use or threatened use of physical force capable of causing injury to a person or property..." *United States v. García-Ortiz*, 904 F.3d 102, 109 (1st Cir. 2018). Petitioner's motion to

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<sup>1</sup> The First Circuit determined that aiding and abetting a carjacking is a crime of force or violence that falls under the elements clause of § 924(c)(3)(A) because the aider and abettor is punishable as a principle. *United States v. García-Ortiz*, 904 F.3d 102, 109 (1st Cir. 2018).

vacate his sentence cannot succeed because his conviction for using a firearm during a crime of violence (carjacking) is predicated on a crime of violence under the element's clause. **Crim No. 15-109 ECF No. 88.** *United States v. Cruz-Rivera*, 904 F.3D 63, 66 (1<sup>st</sup> Cir. 2018). Contrary to petitioner's claim, he was convicted under the elements clause rather than the residual clause of §924 (c). Accordingly, petitioner's motion to vacate his sentence fails.

#### **V. Certificate of Appealability**

According to Rule 11(a) of the Rules Governing § 2255 Proceedings, a "district court must issue or deny a certificate of appealability ("COA") when it enters a final order adverse to the applicant." Rules Governing § 2255 Proceedings, Rule 11, 28 U.S.C.A. § 2255. To be entitled to a COA, an applicant must make "a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). "When the district court denies a habeas petition on procedural grounds without reaching the prisoner's underlying constitutional claim, a [certificate of appealability] should issue when the prisoner shows, at least, that jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right and that jurists of reason would find it debatable whether the district court was correct in its procedural ruling." *Slack v. McDaniel*, 529 U.S. 473, 484 (2000). Applying that standard here, jurists of reason would not find it debatable whether petitioner's claims should be denied. Accordingly, the COA is **DENIED**.

**VI. Conclusion**

Based on the above, Christopher L. Ramos-Torres' petition to vacate, set aside, or correct sentence under 28 U.S.C. § 2255 is **DENIED** and all claims therein **DISMISSED WITH PREJUDICE**. The Clerk of the Court shall enter judgment accordingly.

**SO ORDERED.**

At San Juan, Puerto Rico, on this 20th day of July 2021.

**S/AIDA M. DELGADO-COLÓN**  
**United States District Judge**